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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,878

05/29/2007

Hubertus Hohne

06129

5954

23338 7590 09/02/2010  
DENNISON, SCHULTZ & MACDONALD  
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SUITE 105  
ALEXANDRIA, VA 22314

EXAMINER

MCCARRY JR, ROBERT J

ART UNIT

PAPER NUMBER

3617

MAIL DATE

DELIVERY MODE

09/02/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,878	<b>Applicant(s)</b> HOHNE ET AL.	
	<b>Examiner</b> ROBERT J. MCCARRY JR	<b>Art Unit</b> 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,4-17 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-22 is/are allowed.
- 6) ☒ Claim(s) 2, 4-17 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4-17, 23, 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 recites that "the holder is detachably inserted in an insert comprising electrically insulating material and being cast integrally into the concrete sleeper." The claim is not clear as to whether it is the electrically insulating material or the holder that is cast into the concrete sleeper. This leaves the claims vague and indefinite.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al (US 5,566,882) in view of Fasterding (US 4,802,623).

Brown et al discloses a rail fastening comprised of a rail 2, the rail resting on a ribbed rail pad 4 and anchored to a concrete sleeper, cited as a rail foundation 3. The ribbed rail pad 4 is shown in cross section in figure 6E, and showing the ribbed structure under the rail. The fastening assembly is further comprised of a resilient railway

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fastening clip 1, having a toe portion 14 which bears on the foot of the rail 2. The rail clip 1 is held in place by a holder 5, the holder having upstanding shoulders 15 and a channel 53 for accepting the extending legs of the clip 1. The holder 5 is further cast into the concrete sleeper with the clip 1 being detachable from the holder 5, and the front wall 7 of the holder 5 is also detachably connected to the holder and the sleeper. The holder is further comprised of a downwardly extending leg 50 that extends and is cast into the concrete sleeper.

Brown et al discloses the anchoring assembly as described above. However, Brown et al does not specifically show insulating material cast into the concrete sleeper. FASTERDING et al discloses a concrete sleeper supporting a rail and an anchor and further comprised of a dowel 17 constructed of polyethylene material and attached to a connection portion constructed of glass fiber reinforced plastic material. It is well known in the art that polyethylene material and plastic material act as electrical insulators. It would have been obvious to one of ordinary skill in the art to have applied plastic and polyethylene material layers, like that of FASTERDING et al, to a rail tie and anchor assembly, like that of Brown et al, with the expected result of increasing the insulation of the sleeper and anchoring assembly and reducing wear and corrosion of the components.

Brown et al discloses the anchoring assembly as described above. However, Brown et al does not specifically show a bolt means for securing the holder to the sleeper. FASTERDING et al discloses a concrete sleeper supporting a rail and an anchor and further comprised of a bolt means, in the form of a screw 9, for aiding in the

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anchoring of the clip to the sleeper and the rail. It would have been obvious to one of ordinary skill in the art to have applied a threaded anchor, like that of Fasterding et al, to a clip assembly, like that of Brown et al, with the expected result of increasing the stability and securing of the clip with the anchor in relation to the rail. The threaded anchor would reasonably be interpreted as a failsafe to the shoulders and channel of the holder 5.

### ***Response to Arguments***

Applicant's arguments filed June 22, 2010 have been fully considered but they are not persuasive. Applicant argues that the holder of Brown et al does not adequately read on the claims of the present invention. The applicant argues that the holder of the present invention is removable and the holder of Brown et al is cast into the crosstie and is stationary and immovable. One can reasonably argue that while the holder assembly of Brown et al is cast into the tie, it is still removable. Should the holder assembly be damaged and need to be replaced it is possible to carve the holder out of the tie as opposed to removing the entire viable crosstie assembly when only one component is damaged and needs repair. Further as stated above, it is unclear as to which part of the anchoring assembly is cast into the concrete, whether it be the actual anchor holder or only the electrical insulating material.

### ***Allowable Subject Matter***

Claims 20-22 are allowed.

Claims 4-17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. MCCARRY JR whose telephone number is (571)272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. Joseph Morano/  
Supervisory Patent Examiner, Art Unit 3617

/R. J. McCarry Jr./  
Examiner, Art Unit 3617

RJM  
August 30, 2010